



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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APPLICATION
FOR REHEARING OF
RESOLUTION ESRB-8

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**APPLICATION OF ZUMA BEACH FM BROADCASTERS
FOR REHEARING OF RESOLUTION ESRB-8**

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APPLICATION FOR REHEARING OF RESOLUTION ESRB-8

Pursuant to Rule 16.2 of the California Public Utility Commission’s Rules Of Practice and Procedure and California’s Public Utilities Code, Zuma Beach FM Emergency and Community Broadcasters Inc. (“Zuma Beach FM Broadcasters”) here applies for a rehearing for ESRB-8, “Resolution Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements In Decision 12-04-024 To All Electric Investor Owned Utilities.”

- The Commission failed to diligently notify concerned parties to the Resolution proceeding,
- Commission staff circulated its proposed Resolution ESRB-8 only to parties in a long-settled San Diego case,¹ and thus afforded comment-making ability only to utilities and their representatives. This is contrary to the California Public Utilities Code (“PUC”), which orders in plain English that the Commission “seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding.”²
- Commission staff removed from the original Resolution the proposed requirement that subject IOUs mitigate to the fullest extent possible the dangerous, foreseeable impacts of preemptively killing power to urban areas at times of great natural weather threat.³ This decision was not

³ ESRB-8 Rev. 2 at page 8.

publicized to the public in advance of the vote on July 12, 2018.

More important than those serious procedural errors, in enacting ESRB-8 Rev. 2 the Commission has made major changes in state energy regulatory policy that is contrary to several sections to the plain language of the Public Utility Code:

- Through its decision, the Commission enabled and endorsed IOUs to violate the mandates of PUC section 451, by allowing IOUs to evade their statutory mandate to furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.
- By allowing troublesome circuits to be switched off in bad weather, the Commission allows IOUs to violate PUC section 399.2(a), which requires each electrical corporation to continue to make reasonable investments in its electric distribution grid.
- By allowing IOUs to select areas as subject to intermittent service, the Commission allows them to violate PUC section 455(c), which prohibits IOUs from establishing or maintaining any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.
- By shifting certain customers into interruptible service zones, the Commission allows IOUs to violate PUC section 455(a), by using rates, charges, service, facilities to make or grant some customers the preference or advantage of power that is not interrupted in high winds, while subjecting other customers to the prejudice or disadvantage of being placed in arbitrary interruptible power areas, solely at the discretion of the IOUs.
- The Commission has bypassed its statutory and administrative strictures insofar as ratemaking, as it has allowed IOUs to write their own new rate classifications, which discriminate against residents living in High Fire Risk Areas, which place them in inferior electric service standards while paying the same rates as others.

As shown in this petition, the California Public Utilities Commission has just given IOUs permission to take actions that endanger my property and life, and place my family and my neighbors in a danger that is far more likely to cause loss of life or injury than another electric failure-caused fire.

And the Commission here financially harms our nonprofit, all-volunteer corporation, by shifting the financial burden of generating and delivering power to fulfill FCC-mandated emergency

alerts away from our local IOU, the Southern California Edison Co. (U-336, “SCE”), to ourselves.

1. STANDING AND APPROPRIATENESS.

Zuma Beach FM Emergency and Community Broadcasters Inc. (“Zuma Beach FM Broadcasters”) is authorized under the California’s Public Utilities Code (“PUC”) section 1702, as it is a California corporation, challenging an order or rule of the commission.⁴ Under that section, the Commission “shall” permit interested entities to petition the commission to adopt, amend, or repeal a regulation.⁵ Thus, the PUC specifically allows Zuma Beach FM Broadcasters to become a party to this matter after ESRB-8 has been adopted by the Commission,⁶ subject to the further Rules governing “Participation In Proceedings” for party status.⁷

The undersigned here swears under penalty of perjury that he is general manager and operator of a FM radio station KBUU-LP (“KBUU”), on 99.1 mHz FM, in Malibu Calif., owned by Zuma Beach FM Emergency and Community Broadcasters Inc., a non-profit California corporation made up of Malibu residents, and that KBUU relies on electricity from the SCE at its studio in Malibu, its transmitter in unincorporated Los Angeles County near Malibu, and its two intermediate microwave data relay radio installations in Malibu.

As licensed by the Federal Communication Commission, the FCC has designated KBUU as an essential public service, and Zuma Beach FM Broadcasters has been delegated responsibilities by the Federal Communications Commission to broadcast Emergency Alert System messages to its service area of greater Malibu, Calif.⁸ These messages include official EAS evacuation notices during fires or other emergencies, as well as other non-EAS-protocol news and official notices from civil authorities. As Malibu’s only local radio station, and with a heavy news commitment, KBUU is recognized in Malibu as a news source, and is the only radio station with a signal that covers most of Malibu, due to mountains that interfere with reception of Los Angeles broadcast radio and television stations. Zuma Beach FM Broadcasters has invested more than \$90,000 to fulfill these FCC obligations, obligations it cannot meet without SCE electricity. To this date, SCE has not consulted with Zuma Beach FM Broadcasters, an affected public safety entity, about mitigating the loss of

⁴ California Public Utilities Code (PUC) section 1702.

⁵ PUC § 1708(5)(a).

⁶ PUC § 1701(c).

⁷ Commission Rule 1.4

⁸ See 47 Code of Federal Regulations, Part 11.

electricity crippling its essential public mission.

The undersigned is also a resident of Malibu, and electric customer of SCE in Malibu.

Here, Zuma Beach FM Broadcasters prays for party status in this matter, and also prays that the Commission rescind, alter, or amend its decision and order in adopting Resolution ESRB-8 Rev. 2 at its meeting of July, 12, 2018 (“ESRB”) The Commission may, in issuing its rule or order, adopt, modify, or set aside the proposed decision or any part of the rule or order.⁹ Zuma Beach suggests that the ESRB-8 language be approved on an interim basis, with changes detailed below.

The decision in ESRB-8 was made on July 12, 2018, and this Petition was first timely filed 11 business days later, on July 27, 2018. At the request of Commission Legal Analyst Martin M. Nakahara, this petition was refiled with an amended caption and a revised Certificate Of Service (again, for the settled, old San Diego case), on this date. Other changes, reflecting Commission procedural errors that have surfaced since the original filing, have been added as well to the amended Petition.

2. VIOLATIONS OF PROCEDURE.

A. No notification. The PUC requires the Commission to “seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding.”¹⁰ This requirement was not met, and the Resolution that was approved by the Commission on July 12 inaccurately inferred that proper public notice had been given and that ESRB-8 had been subject to at least 30 days public review.¹¹ The public cannot possibly review something of which it has no knowledge.

The ESRB-2 Rev. 2 that was voted on by the Commission July 12 had no public Service List at all. Proceeding Number ESRB-8 did not exist in the Commission’s list of active dockets. This list consists of parties who commented only on the San Diego Gas & Electric de-energization proposals, which started nearly a decade ago.

The comments that were solicited from the “public” on May 28, as reported in ESRB-8 Rev. 2,¹² were in fact solicited only from parties to a 10-year-old proceeding involving San Diego Gas

⁹ PUC § 1701(4)(e).

¹⁰ PUC § 1711(a) and PUC § 311(g).

¹¹ PUC § 311 (g)(2).

¹² ESRB-8 Rev. 2 at page 7.

and Electric de-energization plans.¹³ The Proposed Resolution was served only on the mailing list for the SDGE decision in 2012, according to the Public Advisor's Office¹⁴ and the Docket Office.¹⁵ The Proposed Resolution was not served or publicized to the rest of the state, using any such broader or more-recent mailing lists as R.15-05-006 (the High Fire Risk Area mapping and regulations), R.08-11-005 (the General Order 95 revisions) or I.0901-018 (the Investigation into the Malibu Canyon pole overloading and subsequent fire).

This had the net effect of circulating ESRB-8 **only** to affected non-utility parties in San Diego about an action that affected every part of the state **except** San Diego.

A review of the ESRB-8 Service List shows precisely one government agency in all of Los Angeles County that was informed, via an e-mail addressed to a Fire Department public servant who is reasonably believed to have retired years ago. Not one affected public safety agency in Los Angeles, Orange, Riverside, San Bernardino, Ventura, Santa Barbara, San Luis Obispo, Monterrey, Contra Costa, Alameda, Colusa, Napa, Marin, Mendocino, Butte or Shasta counties was informed of this proposal. Not one. Only San Diego.

B. Procedural errors in Rulemaking.

To this date, there is no Docket Card for ESRB-8, whether for an open docket or closed, depriving the public of discovering the pending Resolution, which in all intents and purposes is a *de facto* rulemaking. As explained by the Public Advisor,

“a resolution does not have proceeding number because it is not an application, rulemaking, or investigation filed by a utility or initiated by the CPUC. It's best to look at it as its own entity that is related/connected to a particular decision or proceeding. That is why you were unable to locate it in the Docket Card.”

The Commission's spreadsheets “Proceeding Status 06-13-18.xlsx” and “Proceeding Status 7-6-18.xlsx” (which list all open Commission proceedings) did not list ESRB-8 or any such pending matter.¹⁶ Only the Commission's Daily Calendar of June 8 purportedly published any notice of this,

¹³ E-mail of Martin Nakahara, Senior Legal Analyst, CPUC, to Hans Laetz, Aug. 8 2018, attached as Amendment A.

¹⁴ E-Mail of “CPUC Public.Advisor” to Hans Laetz, July 30, attached as Amendment B;

¹⁵ E-mail of Martin Nakahara, Senior Legal Analyst, CPUC, to Hans Laetz, Aug. 8 2018, attached as Amendment A.

¹⁶ California Public Utilities Commission report “Proceeding Status 06-13-18.xlsx”, dated June 13, 2018, report “Proceeding Status 7-6-18.xlsx”, dated July 7, 2018, both retrieved July 20, 2018,

and the word “purportedly” is used, as that document is not available to the public via the Internet, due to formatting errors on the CPUC website.

It was only on July 9, 2018, when ESRB-8 was discovered by Zuma Beach FM Broadcasters on the Commission’s pending July 12 agenda, three days before that meeting, that certain interested parties in Malibu were noticed to this: a reporter actually called the City of Malibu and the Santa Monica-Unified School District to say “have you heard about this?” only to be told “no.” Both agencies rushed letters of comment to the Commission, expressing grave concern with the Resolution’s intent and language, and with the Commission procedure that had bypassed their participation and comment.¹⁷ Those letters are attached as Appendices A and B. This affected party and others thus were denied the right to comment, to view and comment on others testimony as a matter of critical importance was drafted, refined and shaped.

B. No comment requested. The PUC requires the Commission to demonstrate its efforts to comply with its statutory duty to notify the public in the text of the initial Scoping Memo for the proceeding.¹⁸ After days of diligent searching, we can find no Proceeding Number, no Docket, certainly no Scoping Memo. The Public Advisor’s Office did not return six phone calls or email inquiries, asking to see the Resolution’s Scoping Memo, comments, replies and service list, anything, in the days before the vote.¹⁹ No calls or e-mails were returned. If such a Scoping Memo exists, the Commission staff is either unable or unwilling to supply it, or post it on the Internet.

C. Secret comment was taken. The ESRB-8 Rev. 2 resolution states “parties submitted comments by June 28, 2018, and reply comments by July 6, 2018.”²⁰ As stated above, this affected party and others were unaware of those events. There is no public statement anywhere on the CPUC

are greater than 75 pages each and are not attached as they are too voluminous. They are available on the CPUC website.

¹⁷ Letter of Reva Feldman, City of Malibu city manager, of July 10, 2018, filed separately as Appendix C-City of Malibu, and Letter of Cary Upton, Santa Monica-Malibu Unified School District facilities manager, of July 11, 2018, filed separately as Appendix D-Santa Monica Malibu USD.

¹⁸ PUC § 1711(a).

¹⁹ Mr. Laetz hereby swears and attests that these phone calls were placed Friday, July 6, and Monday through Wednesday, July 9-11, and messages were left on the Public Advisor’s phone. Requests for assistance in finding ESRB-8’s Docket were also left on the Public Advisor’s website forms. Teh Public Advisor,

²⁰ ESRB-8 Rev. 2 at p. 7.

website about the availability to review the proposal, make comments, review comments and reply to them, or publication of any of this. The comments thus only reflected the IOUs' in-out, as they were parties to the San Diego matter settled six years ago.

D. Changes were made, watering down the very nature of the Resolution. The ESRB-8 Rev. 2 resolution, as voted on July 12, states that

“based on the parties’ comments, several modifications were made to the draft resolution, including the following:

- One of the factors specified in D.12-04-024 for consideration during reasonableness reviews was expanded for use when applied to all IOUs.
- The requirements for reporting events that do not eventually trigger de-energization were clarified. The full restoration reporting period to the SED was increased from 30 minutes to 12 hours.
- The period for convening De-Energization Informational Workshops was increased from 60 days to 90 days.
- The guidance for meeting with local communities was made a general requirement, rather than tied to specific de-energization events.
- Low-income, limited English, and disability communities were added to the list of parties to include in the De-Energization Informational Workshops.
- Communications providers were added to the list of representatives to be notified in anticipation of a de-energization event.”²¹

In Revision 2 of ESRB-8, Commission staff removed from the Resolution any obligation to the utilities to mitigate the outages - to provide generators and/or batteries to critical facilities “since most critical facilities are required to have their own back-up power resources.”²² This is jaw-dropping, breathtakingly inaccurate. A later section (see pages 13-15) will detail the many dozen affected public safety or utility facilities in Malibu alone that do not have “their own back-up power resources.”

None of those comments were the subject of public comment to all affected parties. The entire matter was privy only to the SDGE parties.

E. The revised ESRB-8 was not made public prior to the vote.

ESRB-8 Revision 2, with its substantially changed language, was not circulated to the public at any time before the vote of July 12. The agenda posted at the internet and in the notebook at the

²¹ ESRB-8 Rev. 2 at p. 7.

²² ESRB-8 Rev. 2 at p. 8.

door to the Commission Hearing Chamber did not carry any Revision 1 or Revision 2, it was the original ESRB-8 mailed out to the San Diego mailing list in May. Important revisions had been inserted, removing the mitigation requirement and other major changes, without notice to the public or affected parties. This is violative of PUC Section 311(g)(1), which states that

“(p)rior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, “decision” also includes resolutions, including resolutions on advice letter filings. which requires that affected parties be consulted when changes are proposed. (Emphasis added.)

ESRB-8 revision 2 was a resolution that required affected parties to be consulted when changes were proposed. Although the draft resolution was mailed to parties for comment on May 30, 2018, and was purportedly noticed on the Commission’s Daily Calendar on June 8, 2018, the revised resolution was substantially different — as the Commission staff noticed in the laundry list of revisions.²³ The revised resolution was not released to the public until after the vote of July 12. The public was thus given zero days’ notice and zero days to comment on the proposed decision.

F. The Public Advisor’s Office would not even take a query on these matters.

The Public Advisor’s Office would not return multiple phone calls and e-mails made to it the week leading up to the July 12 vote.

In fact, all queries to the Public Advisor’s Office were met with this email response:

Hello,

Thank you for taking the time to write to the California Public Utilities Commission (CPUC).

If your email provides comment on the CPUC’s programs or policies, we will share it with the appropriate individuals. If you have provided comment on a specific proceeding, it will also become part of the administrative record for that proceeding.

We are grateful to hear from you because public comments help the CPUC make informed decisions.

Please visit our website (www.cpuc.ca.gov) at any time if you need assistance, or contact us directly. You can also follow us on [Twitter](#), [Instagram](#), [Facebook](#), and [YouTube](#) (we are @CaliforniaPUC on all).

Your comments in Spanish are also welcomed.

Sincerely,
Public Advisor’s Office

²³ ESRB 8 Revision 2 at page 8.

No other reply was ever received. Public Advisor Allison Brown told the undersigned on July 12 in San Francisco that her office was experiencing unusual issues, and she apologized. The Public Utilities Code requires the Commission “to appoint a public advisor and ... employ staff as necessary to carry out the duties of the office of the public advisor.” And the PUC directs that the office of the public advisor

“shall assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission. The public advisor shall advise the commission on procedural matters relating to public participation in proceedings of the commission.”²⁴

As a result of the Public Advisor’s inability to return phone calls or emails about procedural matters, the undersigned was unable to obtain information about this proceeding, such as Revision 2, and was unable to obtain support for his participation in the commission’s proceedings, as required by PUC Section 321(b). It is unconscionable that the Commission vote occurred when members of the public and affected public agencies were seeking assistance to be heard from a legislature-required office that simply failed to perform its basic task.

4. VIOLATIONS OF LAW.

G. Pub. Util. Code 451 Does Not Allow Pre-emptive Blackouts.

The Commission enabled and endorsed flagrant violations of PUC section 451, by allowing Investor-Owned Utilities (IOUs) to evade their statutory mandate to furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

A power distribution system that cannot deliver power safely, during high winds below 92 miles per hour, is reasonably and *per se* a power system that is unsafe, and cannot operate to promote the the safety, health, comfort, and convenience of its patrons, employees, and the public. Ninety-two miles per hour is rule of thumb used by the Safety Enforcement Division is enforcing

²⁴ PUC § 321(a).

General Order 95. ESRB-8 does not set any minimum standards for the IOUs, it allows them to unilaterally and without local input set their own standards. It does not even require those operating rules to be made public.

H. The Commission Allows The IOUs to Evade Their Responsibilities To Invest.

The Commission enabled and endorsed violations of PUC section 399.2(a), which requires each electrical corporation to continue to make reasonable investments in its electric distribution grid. Allowing pre-emptive power blackouts means the IOUs can spend less to harden their systems.

I. The Commission allowed IOUs to differentiate between service levels geographically,

The Commission enabled and endorsed violations of PUC section 455(c), which prohibits IOUs from establishing or maintaining any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. There was a fear voiced when the commission set up tiers of relative fire risk, the fire risk maps would be used punitively against consumers. Less than two years later we find that to be exactly the case.

J. The Commission has abetted the IOUs in creating a classification for a new rate.

The Code states that “a public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.”²⁵ The Commission in this Resolution allows IOUs to use service levels to grant preference or advantage to any corporation or person outside areas deemed to have high fire danger. The exact same types of power line fires happen all across California - palm fronds cause outages in Montclair and Malibu, Laguna Beach and Laguna Hills. The new rules subject corporations and persons in certain areas to prejudice and disadvantage based on geography. The Commission here has bypassed its statutory and administrative structures insofar as ratemaking, as it has allowed IOUs to write their own new rate classifications, which charge residents living in High Fire Risk Areas the same price for interruptible power supply as charged to others for non-interruptible service.

²⁵ PUC § 454(a).

5. IMPACTS NOT DISCUSSED IN ESRB-8.

K. Mitigation “not needed.” As a result of the procedural errors cited above, Resolution ESRB-8 was rushed through with language about requiring IOUs to mitigate anticipated problems with blacking out urban areas. In fact, the mitigation proposal originally to be imposed on the IOUs was actually removed from the Resolution, without notice to the general public. As noted above, ESRB Revision 2 was not circulated to the general public for comment before the Commission’s July 12 vote. The Resolution was revised to remove language requiring the IOUs to mitigate the pre-emptive blackouts, following comment from unknown parties (the Comments and Replies are not posted anywhere on public Commission websites). ESRB-8 simply concludes that “The requirement to provide generators and/or batteries to critical facilities was removed since most critical facilities are required to have their own back-up power resources.”²⁶

This conclusion is not factually correct. The following “critical facilities” in Malibu do not have backup generators, and such a list would likely reflect problems in other communities as well:

- 24 traffic signals, essential for orderly evacuation and fire equipment staging.
- water pumps, both for municipal fire hydrants and individual property fire protection.
- Frontier landline telephones, which now require SCE electric power at the customer location.
- all cellular telephones, which lose signal when SCE power is shut off for planned maintenance.
- all Internet data transmission, essential for city evacuation alerts and private communications.
- cell tower facilities necessary for WEA cellular-tower-level alert transmission.
- Malibu broadcast station KBUU, which is essential to transmitting dynamic fire evacuation directions.
- Malibu schools, which cannot be kept open in the threat of a blackout.
- thousands of individual onsite wastewater treatment systems, which require 24/7 pumps.
- individual property gates and garage doors, essential for evacuation.
- gas stations.
- veterinary clinics, which require power for care of animals on premises.

L. Public Safety. Due to the absence of public notice and consultation, the following impacts on public safety were not discussed in the drafting of the Resolution:

- arson prevention, when Santa Ana winds cause pre-emptive blackouts, resulting in evacuated areas

²⁶ ESRB-8 Rev. 2, at page 7.

that are ripe for arsons.²⁷

- looting protection, when entire cities are blacked out and depopulated for safety reasons.
- traffic control, at 24 signalized intersections in Malibu, each with zero to three hour battery backup and the capacity to paralyze traffic on Pacific Coast Highway, the only evacuation route in Malibu.
- perimeter control, necessary to prevent crime in an evacuated or blacked out areas.
- inability of citizens to report crimes or request assistance, due to dead landlines, internet and wireless data.
- injury to persons due to traffic collisions caused by the blackouts.
- the possibility that areas like Malibu may have to be evacuated if fire weather and related power outages are predicted to last any substantial length of time.

M. Impacts on school districts. Due to the absence of public notice and consultation, the following impacts on public schools were not discussed in the drafting of the Resolution:

- schools do not have emergency generators, or in many cases, evacuation lighting.
- schools will have to be closed whenever an IOU announces a possible shutdown, as districts will not be able to guarantee the safe transportation of student and employees on paralyzed streets.
- day care must be provided, outside the blackout area, for thousands of pupils without schools to attend.
- school districts may lose millions of dollars in state aid due to absent children.

N. Impacts on public health. Due to the absence of public notice and consultation, the following impacts on public health were not discussed in the drafting of the Resolution:

- individual Onsite Wastewater Treatment Systems (OWTS), which require 24/7 pumps to treat sewage. About 40-60 percent of Malibu homes are reasonably believed to have been converted from old-fashioned septic tank systems, which are passive, to OWTS units, which actively use ultraviolet lights and aerators to better clean effluent. These units must be extensively rehabilitated or replaced if raw sewage stagnates for more than 24 to 48 hours. These units cannot simply be restarted after a lengthy power outage, they must be inspected. Most require manual reset for that reason. The percentage of these units on batteries or generators is believed quite low.
- water in domestic delivery systems may flow backward or stagnate as pumps stop, causing contamination issues.

²⁷ This happened in Malibu at Thanksgiving 2007, when the city was under Red Flag Warnings for severe fire danger, and arsonists kicked burning logs off a cliff to watch the sparks fly.

- water flow “hammers” or pressure differences caused by restarting pumps that may damage mains.
- small sewage stations operated by Los Angeles County in Malibu need portable generators in the event of SCE failure.
- the impact on local and regional air quality caused by hundreds of small generators.

O. Increased fire danger caused by blackouts. Due to the absence of public notice and consultation, the following increases in fire danger were not discussed with any firefighting agency, in the drafting of the Resolution:

- the existence of solar panels with feed-in device meters, which will continue to supply electricity to SCE circuits that are supposedly de-energized.
- use of candles, kerosene lanterns or other open flame lighting devices in blacked out areas, which will cause increased danger of fires.
- cooking grills, both bottled gas and charcoal, used by people without functioning kitchens, and which will increase danger of fires.
- “hot fueling” portable generators with gasoline are known causes of ignition and injury, and will increase ignition sources.
- traffic collisions at blacked out intersections are known causes of fires and injuries, and these will delay firefighters as they deal with rescue and traffic.
- firefighters will be needed to patrol blacked out areas for new spot fires or building fires, as citizens will be unable to use phones to call in reports.
- blacked out areas may be depopulated, meaning mutual aid firefighters from distant locales will have no informed citizenry to guide them to access roads, fire hydrants, or other important fire tools.
- the “attractive nuisance” factor of abandoned, blacked out cities to arsonists.
- individual generators may malfunction, during blackouts or between them, causing fires.

P. Impact On Other Utilities. It can reasonably expected that thousands of Californians will switch to on-site generators fueled by natural gas. Is the local delivery system in any community capable of supplying this sudden demand? Is the Sempra storage capacity, crippled by the loss of Aliso Canyon, capable of meeting this demand? This was not examined in the formation or passage of ESRB-8.

6. CONCLUSION.

While no one can dismiss the fire dangers presented by changing climate conditions, the commission has, respectfully, rushed to judgment and violated its own procedures, as well as those set by the Public Utilities Code. It has bypassed well-established, prescribed procedure for instituting rulemaking, and consulting with affected parties. It allowed public comment from some “parties” to a *de facto* rulemaking procedure that was entirely *ex parte* in nature, open to only a few.

It has created a subset of second-class utility customers, who pay the same rates as customers of investor owned utilities elsewhere in the state, but who get inferior, interruptible service. And the Commission has just given the IOUs a gigantic loophole to drive through well-settled California state laws.

From the outside, it appears ESRB-8 was conceived in bureaucratic secrecy, refined behind closed doors, and voted on without any meaningful public review. It hands over sole decision making authority to the IOUs and relieves them of any burden to mitigate the impacts as they shed coverage area to reduce liability.

Your own staff reports that about 14,000 people were cumulatively affected by the San Diego Gas and Electric pro-active blackouts in the East County. Malibu alone has that many people, plus 24 traffic lights, a high school, medical facilities and other facets of urban life. Extending the back country San Diego rules statewide is a grave danger.

The undersigned argues that - contrary to staff’s assertion - there simply is no language whatsoever in the Public Utilities Code that allows utilities to preemptively shut off power, as opposed to isolate damaged circuitry. No case law allows it either. At the very best, this is a matter of unsettled civil law, and in such cases it is the plain language of the law that controls. And the statutes are quite plain: utilities have the obligation to furnish reasonable service and equipment to promote the safety, health, comfort and convenience of the public. A change of such magnitude in state regulatory procedures - allowing IOUs major exemptions to Public Utility Code obligations created by the Legislature - deserves reasoned, thorough discussion. The urgency of the oncoming fall winds is duly noticed. So is the urgent threat to public safety caused by an ill-conceived, rushed, undiscussed major change in California electric delivery regulations. The Commission may fairly argued that it is right for the Commission to balance the respective dangers of each course of action: blackouts or incremental fire risk. But state law and Commission rules require that to be done in an open, orderly rulemaking process. This was neither.

It is incumbent on the Commission to reject Resolution ESRB-8 due to its procedural errors, and reopen the issue in a manner it chooses, with the proper public review and input that the Commission normally accords. At the very least, ESRB-8 should be made an interim rule, until a full vetting of the impact of extending SDGE's back-country blackout procedures into major urban areas can be examined thoroughly, and modified appropriately. It may be appropriate to open a formal rulemaking procedure, and declare ESRB-8 to be an interim rule.

7. REQUEST FOR RELIEF.

Zuma Beach FM Broadcasters well recognizes the need to de-energize circuits in emergencies, but raises the question: Do routine, approaching windstorms constitute emergencies? Southern California has been host to major wind events since well before the arrival of electricity. If there is evidence that the windstorms are becoming more severe, as opposed to more frequent, that evidence has not been presented in what we have seen of this proceeding. Further, it has been longstanding belief of the Commission's Safety Enforcement Division that General Order 95 requires overhead power lines to withstand sustained winds of 92 miles per hour for three seconds. The policies of ESRB-8 undercut that established, vetted public policy.

ESRB-8 plunges the state into uncertainty: how often will power be cut, and in what areas, under what conditions? At least one utility, SCE, is responding to those logical questions with the answer: situational conditions will dictate that.²⁸ No other section of California energy regulatory policy is handed over to IOUs to determine by the seat of their pants. No other section of California energy policies allows IOUs to determine on their own the conditions under which it will provide the power that they are required to deliver safely and reliably, under PUC section 399.

Zuma Beach FM Broadcasters implores the Commission to revisit ESRB-8. and restore reasonable mitigation requirements upon the IOUs. ESRB-8 should be an interim policy until new rules can be instituted in this matter of vital public importance. A formal request for Rulemaking will take time and expertise to draft, and Zuma Beach FM Broadcasters suggests that the Commission's ESRB and/or SED are the proper parties to initiate that.

8. REQUEST FOR PARTY STATUS AND SERVICE LIST INCLUSION.

²⁸ Steve Chui, SCE engineer, describing SCE preemptive blackout policies, at the City of Malibu Public Safety Commission meeting, Aug. 2, 2018.

Given the procedural deficiencies in ESRB-8, as listed above, the undersigned at this date requests party status in this matter. Such request is timely, as the Commission's obligations to solicit would-be parties, public comment and consultation as required by the Public Utilities Code were not met in this case, and this party was not notified of the proceeding.

The undersigned also requests to be placed on the Service List for ESRB-8.

9. CERTIFICATE OF SERVICE.

At the direction of Commission Senior Legal Analyst Martin M. Nakahara, this petition will be served on the latest known Service List for D.12-04-024, as attached in the sworn Certificate Of Service, immediately after this Petition is electronically refiled with the Commission. It will also be served on Commission President Michael Picker at michael.picker@cpuc.ca.gov, and the Chief Administrative Law Judge anne.simon@cpuc.ca.gov, and mailed to Judge Simon.

Under penalty of perjury and sworn to the best of my knowledge, this is resubmitted as directed in this 10th day of August, 2018, at Malibu and Los Angeles, California,

/s/ Hans Laetz

Hans Laetz

Zuma Beach FM Emergency and Community Broadcasters Inc.
Radio Malibu 99.1 FM KBUU
Hans Laetz, General Manager
6402 Surfside Way
Malibu CA 90265
hanslaetz@gmail.com
(424) 442-9862

Attachments

- A. E-mail of Martin Nakahara, senior legal analyst,
California Public Utilities Commission, to Petitioner
Zuma Beach FM Broadcasters pages 19-20
- B. E-mail of “Public.Advisor” California Public Utilities
Commission, to Petitioner Zuma Beach FM Broadcasters pages 21-22
- C. Letter of City of Malibu Attached to e-file
- D. Letter of Santa Monica-Malibu Unified School District ... Attached to e-file

APPENDIX A

To: Petitioner, Hans Laetz
From: Martin Nakahara, martin.nakahara@cpuc.ca.gov
Date: Aug 8 2018

Your Petition for Reconsideration of Resolution ESRB-8 ("Primary document"), timely received on 7/27/2018, was referred to our Legal Division for Review & Recommendation.

The Legal Division has recommended that the caption of the document be changed from:

- ~~Resolution Extending De-Energization Reasonableness, Notification, Mitigation And Reporting Requirements in Decision 12-04-024 To All Electric Investor Owned Utilities~~

to read as follows:

- Application for Rehearing of Resolution ESRB-8.

Please make the change to the caption of the primary document and also of the Certificate of Service document on which I have provided additional information, below. Please remove paragraph 6 entitled Certificate of Service.

The document entitled "Service List for (etc.) [Second doc, see above] must be formatted properly in that the caption must be changed and it should be entitled "Certificate of Service" (COS). The COS document you submitted did not meet threshold filing requirements. I have enclosed a sample COS so you may properly prepare and format the same.

Here is that link (See second doc):

<http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=All&DocID=218399176>

To that COS, you must attach a list of those on the Service List for Resolution ESRB-8. For your convenience, I have secured, and I enclose, a copy of the Service List used by the Commission to serve the parties to that resolution on or about May 30, 2018.

You MUST SERVE and EFILE BOTH REVISED DOCUMENTS (primary Document + Certificate of Service) NO LATER THAN AUGUST 14, 2018. After that date, the document is not timely tendered and we will reject its filing.

Before re-submitting these docs, please make sure both are PDF/A compliant as required by Rule 1.13(b)(1)(i).

If you require further assistance, please contact the Public Advisors Office:

public.advisor@cpuc.ca.gov
toll free 1-866-849-8390
(Northern California)

public.advisor.la@cpuc.ca.gov

toll free 1-866-849-8391
(Southern California).

Now, Efile Control 123218 will be rejected.

Regards,

MARTIN M. NAKAHARA

Senior Legal Analyst

California Public Utilities Commission

Docket Office – Room 2001

✉ Email: martin.nakahara@cpuc.ca.gov

☎ 415-703-2291 (Direct)

☎ 415-703-1929/1927 (Office)

APPENDIX B

FROM: Public.advisor@capuc.[onmicrosoft.com](mailto:public.advisor@capuc.onmicrosoft.com)

TO: HansLaetz@gmail.com

Date: July 30, 8:52 a.m.

Hello Mr. Laetz,

A resolution does not have proceeding number because it is not an application, rulemaking, or investigation filed by a utility or initiated by the CPUC. It's best to look at it as its own entity that is related/connected to a particular decision or proceeding. That is why you were unable to locate it in the Docket Card.

According to the resolution, it stems from decision D.12-04-024 which was the final decision for SDG&E's application A.08-12-021. The service list for that proceeding is likely what was used for Resolution ESRB-8. I have included the link to A.08-12-021's service list below.

https://ia.cpuc.ca.gov/servicelists/A0812021_78061.htm

Thank you.